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IN THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF IDAHO

ROBIN JOHNSON, an individual, and as
Personal Representative of the Estate of Craig
A. Johnson,

Plaintiffs,

vs.

BONNER COUNTY, a political subdivision of
the State of Idaho, BONNER COUNTY
SHERIFF'S OFFICE, a department of Bonner
County, BONNER COUNTY
UNDERSHERIFF ROR LAKEWOLD, in his
individual and official capacity GARY
MADDEN, in his individual and official
capacity, SHAWN DEEM, in his individual
and official capacity, MIKE GAGNON, in his
individual and official capacity, TED
SWANSTROM, in his individual and official
capacity, and PHIL STELLA, in his individual
and official capacity, and DOES 1-10.

Defendants.

Civil Action No. 2:18-cv-244

**COMPLAINT FOR DAMAGES JURY
TRIAL REQUESTED**

ECF Case

**COMPLAINT FOR DAMAGES JURY
TRIAL REQUESTED - 1**

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1 **COMPLAINT**

2
3 COMES NOW the Plaintiff, Robin Johnson, in her individual capacity and as the
4 executor of the estate of decedent Craig A. Johnson, by and through her attorneys of
5 record, and against Defendants Bonner County Sheriff's Office (BCSO), Bonner County
6 Undersheriff Ror Lakewold, Detective Phillip Stella; Deputy Gary Madden; Sergeant
7 Shawn Deem; Deputy Ted Swanstrom and Deputy Mike Gagnon, hereby complains and
8 alleges as follows:
9

10 **INTRODUCTORY STATEMENT**

11
12 1. This is a civil rights action pursuant to 42 U.S.C. § 1983, for use of
13 excessive force and deadly force in attempting the arrest Craig A. Johnson on
14 September 26, 2017. The display of force used in attempting the arrest, and the use of
15 deadly force during the course of the arrest, were in violation of the Fourth Amendment
16 of the United States Constitution, made applicable to the states via the Fourteenth
17 Amendment to the United States Constitution, as well as pendent state law claims
18 arising from the conduct of the defendants;
19
20

21 **JURISDICTION AND VENUE**

22
23 2. This Court has jurisdiction of Plaintiff's claims for violations of federal
24 constitutional rights pursuant to 28 U.S.C. § 1331 and § 1343. This action is authorized
25 and instituted pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 12132, *et. seq.*

**COMPLAINT FOR DAMAGES JURY
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1 3. This Court has jurisdiction over Plaintiff's state law claims set forth in this
2 Complaint, pursuant to supplemental jurisdiction to hear related state law claims under
3 28 U.S.C. § 1367(a). Both federal and state claims alleged herein arose from a
4 common nucleus of operative facts, the state actions are so related to the federal claims
5 that they form part of the same case or controversy, and the actions would ordinarily be
6 expected to be tried in one judicial proceeding.

7
8 4. Actions complained of herein took place within the jurisdiction of the
9 United States District Court, District of Idaho, in that one or more of the Defendants
10 reside in Idaho and Plaintiff's claims for relief arose in this District. Accordingly, venue
11 in this judicial district is proper under 28 U.S.C. § 1391.

12
13 **PARTIES**

14
15 5. Plaintiff, ROBIN JOHNSON, is the widow of the decedent Craig A.
16 Johnson. She is also the Personal Representative of his Estate.

17 6. Defendant BONNER COUNTY is a political subdivision of the state of
18 Idaho.

19 7. As a local governmental entity, Bonner County is a sueable person under
20 42 U.S.C. § 1983.
21

22 8. At all times relevant to this Complaint, Bonner County employee several of
23 the Defendants (police officers) through the Bonner County Sheriff's Office and several
24 of Defendants Does.
25

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1 9. At all times relevant to this Complaint, Defendants and Does were acting
2 pursuant to Bonner County's laws, customs, and/or policies applicable to Bonner
3 County.

4 10. As the employer of Defendants and Does, Bonner County is vicariously
5 liable for all of the tortious and unconstitutional acts and omissions of the Defendants
6 and Does, committed within the course and scope of their employment.

7 11. Defendant BONNER COUNTY SHERIFF'S OFFICE ("BCSO") is a
8 department within Bonner County.

9 12. Defendant Bonner County Undersheriff Ror Lakewold ("Undersheriff
10 Lakewold"), was at the time of the events, and now is, the Sheriff of Bonner County.
11 Defendant Undersheriff Lakewold is sued in his individual and official, supervisory
12 capacity.

13 13. Defendant Detective Phillip Stella ("Detective Stella") was at all times
14 relevant hereto, acting under the color of state law as an employee and police officer of
15 BCSO. Defendant Detective Stella is sued in his individual and official, supervisory
16 capacity.

17 14. Defendant Deputy Gary Madden ("Deputy Madden"), was at all times
18 relevant hereto acting under the color of state law as an employee and police officer of
19 BCSO. Defendant Deputy Madden is sued in his individual and official capacity.

20 15. Defendant Sergeant Shawn Deem ("Sniper Deem") was, at all times
21 relevant hereto, acting under the color of state law as an employee and police officer of
22 BCSO. Defendant Sniper Deem is sued in his individual and official capacity.

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**COMPLAINT FOR DAMAGES JURY
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16. Defendant Deputy Ted Swanstrom (“Sniper Swanstrom”) was at all times relevant hereto acting under the color of state law as an employee and police officer of BCSO. Defendant Sniper Swanstrom is sued in his individual and official capacity.

17. Defendant Deputy Mike Gagnon (“Deputy Gagnon”) was at all times relevant hereto, acting under the color of state law as an employee and police officer of BCSO. Defendant Deputy Gagnon is sued in his individual and official capacity.

18. Defendants Does 1-10 ("Does"), were at all times members of the Sherriff's Office working under the color of law. Defendants Does are each sued in their individual and official capacities and will be named as discovery is obtained.

19. Plaintiff served a timely tort claim notice in compliance with the Idaho Tort Claims Act.

20. Plaintiff is entitled to an award of fees and costs pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 12205.

FACTS

21. On September 24, 2017, Plaintiff Robin Johnson called BCSO to request a health and welfare check on her husband, Craig A. Johnson, with whom she'd had a verbal altercation the night before, from whom she had not heard in approximately 24-hours.

22. Defendant Deputy Madden responded to the call and at approximately 11:54 p.m. on the evening of September 24, 2017.

23. Defendant Deputy Madden drove to the couple's cabin home in Coolin, Idaho.

COMPLAINT FOR DAMAGES JURY TRIAL REQUESTED - 5

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1 24. As Deputy Madden parked in the driveway at the front of the home, Craig
2 Johnson appeared on the upstairs deck carrying a firearm.

3 25. Craig Johnson had a legal right to possess the firearm.

4 26. Craig Johnson had a legal right to use reasonable means to defend
5 himself and his home.

6 27. Craig Johnson instructed Deputy Madden to leave the property, using the
7 weapon to demonstrate the ability to defend himself and his property.

8 28. Deputy Madden did not believe that Craig Johnson aimed the firearm at
9 him.

10 29. Deputy Madden drew his firearm and aimed it directly at Johnson "center
11 mass."

12 30. Craig Johnson continued to demand that Deputy Madden leave.

13 31. Deputy Madden continued to point his firearm at Craig Johnson "center
14 mass."

15 32. Craig Johnson did not verbally express an intent to injure Deputy Madden.

16 33. Craig Johnson verbally expressed only a demand that Deputy Madden
17 leave the property.

18 34. Craig Johnson can be seen gesturing his weapon towards the exit of the
19 property in insistence that Deputy Madden leave.

20 35. Craig Johnson continued to demonstrate an ability to defend himself
21 against the weapon Madden had drawn and aimed "center mass" at him.

22 36. After approximately one-minute Craig Johnson retreated into his home.
23
24
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1 37. Following the health and welfare check Deputy Madden contacted plaintiff
2 Robin Johnson and informed her that Craig was at the cabin, that the health and welfare
3 check involved displays of firearms.

4 38. Deputy Madden also told plaintiff Robin Johnson that Craig Johnson was
5 “in a bad place” and that she should stay away and give him time to calm down.

6 39. Deputy Madden and his partner, Deputy Tim Reynolds, contacted
7 dispatch to determine whether Craig Johnson had any prior felonies so that they could
8 get a warrant for his arrest for felon in possession of a firearm.

9 40. Dispatch advised Deputy Madden and Deputy Reynolds that Craig
10 Johnson had no prior criminal history.

11 41. Deputy Madden obtained an arrest warrant for Craig Johnson with the
12 charge of felony assault.

13 42. On or about September 25, 2017, Deputy Gagnon of BSCO read the
14 report involving the Craig Johnson health and welfare check.

15 43. In January of 2017, Deputy Gagnon had been shot by a suspect while
16 attempting to serve a felony arrest warrant.

17 44. As of September 2017, Deputy Gagnon still suffered from PTSD related to
18 the January incident.

19 45. Deputy Gagnon was concerned that most people [i.e., other officers] did
20 not recognize the “severity of the incident” regarding the health and welfare check.

21 46. Deputy Gagnon “made the team [he was] on at the time aware and then
22 eventually everyone aware of what had happened.”

23 47. Deputy Gagnon of BSCO investigated Craig Johnson.
24
25

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1 48. Deputy Gagnon was not instructed to investigate Craig Johnson.

2 49. Deputy Gagnon wanted to “know what he looks like” and “know what he
3 drives”.

4 50. Deputy Gagnon went to The Mooseknuckle, Craig Johnson’s place of
5 work.

6 51. Deputy Gagnon spoke to Craig Johnson’s boss about Craig Johnson.

7 52. Deputy Gagnon spoke to Craig Johnson’s boss using “the rouse was I
8 was still there checking on – on [Craig Johnson’s] welfare.”
9

10 53. In reality, Deputy Gagnon was “trying to find out more about [Craig
11 Johnson]”

12 54. Deputy Gagnon spoke with Deputy Thomson about attempting to
13 apprehend Johnson.

14 55. Based solely on the information contained in the dispatch report of the
15 health and welfare check, which resulted in the issuance of the arrest warrant, Deputy
16 Gagnon and Deputy Thomson suspected that Craig Johnson might be in an unstable
17 mental condition.

18 56. Deputy Gagnon had no formal training regarding assessing whether a
19 suspect had an unstable mental condition.
20

21 57. Deputy Gagnon had no formal training regarding investigating a suspect
22 with an unstable mental condition.

23 58. Deputy Thompson had no formal training regarding assessing whether a
24 suspect had an unstable mental condition.
25

**COMPLAINT FOR DAMAGES JURY
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1 59. Deputy Thompson had no formal training regarding investigating a
2 suspect with an unstable mental condition.

3 60. Based solely on the information contained in the dispatch report of the
4 health and welfare check, which resulted in the issuance of the arrest warrant, Deputy
5 Gagnon and Deputy Thomson determined that “[Craig] Johnson may not hesitate to
6 attack a member of the general public.”

7 61. Deputy Gagnon continued investigating Craig Johnson.

8 62. At 1:29 p.m. on September 25, 2017, someone from BCSO called Craig
9 Johnson’s cellphone.

10 63. Craig Johnson did not answer the 1:29 p.m. phone call from BSCO.

11 64. The BSCO caller did not leave a message.

12 65. Deputy Gagnon contacted Craig Johnson’s wife, Plaintiff Robin Johnson,
13 via phone on September 25, 2017 at approximately 2:24 p.m.

14 66. Based on that conversation Deputy Gagnon concluded that it “appeared
15 Johnson was in the midst of a mental event.”

16 67. Deputy Gagnon did not have any formal training related to drawing such
17 conclusion.

18 68. Deputy Gagnon did not have any formal training related to continued
19 investigation or evaluation of an individual who was “in the midst of a mental event.”

20 69. At approximately 4:30 p.m. on Monday, September 25, 2017 Detective
21 Stella, calling from BSCO, left a voice message on Craig Johnson’s phone indicating
22 that he was “following up” on the welfare check from the prior evening.
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1 70. At approximately 5:20 p.m. on Monday, September 25, 2017, Craig
2 Johnson texted his wife, plaintiff Robin Johnson stating, "You need to call the police and
3 tell them to back off."

4 71. At 5:21 p.m. on Monday, September 25, 2017, Robin Johnson called
5 Detective Stella. The call lasted 1 minute 44 seconds.

6 72. Detective Stella represented to Plaintiff Robin Johnson that he was still
7 assessing whether she had continued concerns regarding Craig Johnson's well-being.

8 73. Detective Stella withheld from Plaintiff Robin Johnson that BSCO had
9 secured a warrant for Craig Johnson's arrest on charges of felony assault.

10 74. Detective Stella withheld from Plaintiff Robin Johnson that he was
11 considering using BSCO's Emergency Response Team (ERT) to serve the arrest
12 warrant on Craig Johnson.

13 75. On September 25, 2017, Deputy Thomson was attempting to determine if
14 Craig Johnson had any prior involvement with law enforcement.

15 76. Deputy Thomson contacted law enforcement in Spokane, WA and learned
16 that Craig Johnson had no prior involvement with law enforcement in that location.

17 77. Deputy Gagnon and Deputy Thomson relied on Johnson's lack of a
18 criminal record and lack of prior incidents with law enforcement to reach the conclusion
19 that Johnson posed an even more extreme threat to both civilians and law enforcement.

20 78. Neither Deputy Gagnon nor Deputy Thompson had formal training
21 regarding the correlation between lack of prior engagement with law enforcement and
22 increased threats towards law enforcement.
23
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25

1 79. Neither Deputy Gagnon nor Deputy Thompson had formal training
2 regarding the correlation between lack of prior engagement with law enforcement and
3 increased threats towards civilians.

4 80. Detective Stella's call logs do not indicate that he used the cell phone to
5 make any calls to Craig Johnson on September 25, 2017.

6 81. At 7:15 p.m. someone from BCSO called Craig Johnson's cellphone.

7 82. Craig Johnson did not answer the 7:15 phone call.

8 83. The BSCO caller did not leave a message.

9 84. At 7:26 p.m. on Monday, September 25, 2017, Craig Johnson placed a
10 call to BSCO. The call lasted 13 seconds.

11 85. At 7:27 p.m. on Monday, September 25, 2017, Johnson placed a call to
12 his wife, Plaintiff Robin Johnson, that lasted 7 minutes and 30 seconds.

13 86. Less than 10 minutes later, at 7:36 p.m. on Monday, September 25, 2017,
14 Craig Johnson called BSCO.

15 87. The 7:26 p.m. call from Craig Johnson to BSCO lasted 56 seconds.

16 88. BCSO did not return Craig Johnson's 56 second call on September 25,
17 2017.

18 89. BSCO lost or destroyed all record of the 56 second call from Craig
19 Johnson to BSCO made on September 25, 2017.

20 90. At 9:31 p.m. on Monday, September 25, 2017, Craig Johnson spoke on
21 the phone with his wife, plaintiff Robin Johnson, for 44 minutes and 25 seconds.

22 91. During that call, Craig Johnson told his wife that he contacted the sheriff's
23 office and left them a message.

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1 92. At the conclusion of that call, Robin Johnson believed that issues with her
2 husband were resolving and that he had made necessary contacts with law
3 enforcement in order to further discuss and resolve any misunderstandings related to
4 the health and welfare check.

5 93. At the conclusion of that call, Robin Johnson planned to join her husband
6 at their Coolin residence later in the week, as was their regular habit and routine.

7 94. At the conclusion of that call, Robin Johnson had no further concerns
8 about the health and wellbeing of her husband.

9 95. Unbeknownst to Robin Johnson, Detective Stella, in conjunction with
10 Undersheriff Lakewold, determined that situation warranted use of the ERT to serve the
11 arrest warrant on Craig Johnson.

12 96. No member of the BSCO conducted surveillance on Craig Johnson for
13 purposes of obtaining information regarding his emotional state.

14 97. No member of the BSCO instructed, ordered, asked, or suggested that
15 plaintiff Robin Johnson remain available by phone for any purpose.

16 98. No member of the BSCO instructed, order, asked, or suggested that
17 plaintiff Robin Johnson inform or report to Defendants the substance of any
18 conversations, in whatever form, including calls, VM, texts, or e-mails she had with Mr.
19 Johnson the day before the shooting.

20 99. No member of the BSCO instructed, order, asked, or suggested that
21 plaintiff Robin Johnson inform or report to Defendants the substance of any
22 conversations, in whatever form, including calls, VM, texts, or e-mails she had with Mr.
23 Johnson the day of the shooting.

24
25 **COMPLAINT FOR DAMAGES JURY
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1 100. The BSCO ERT normally has 12 persons.

2 101. On September 26, only seven regular members of the ERT were
3 available:

- 4 a. Robert Van Buren
5 b. Ror Lakewold
6 c. Timothy Reynolds
7 d. Aaron Walker
8 e. Phillip Stella
9 f. Shaun Deem
10 g. Ted Swanstrom

11 102. Riley Flannigan of the Sandpoint Police Department joined forces with the
12 BCSO's ERT for purposes of serving Craig Johnson's arrest warrant.

13 103. Detective Stella and Undersheriff Lakewold consciously decided to use
14 the ERT to serve the arrest warrant the morning of September 26, 2017 even though
15 five of the normal team members were not available.

16 104. Detective Stella and Undersheriff Lakewold consciously decided to use
17 the ERT to serve the arrest warrant the morning of September 26, 2017 even though
18 the lead sniper, Deputy Swanstrom, had been awake for 17 hours and on shift for 13
19 hours when the mission began.

20 105. Being awake for 17 hours is the functional equivalent of a BAC of .05.

21 106. At the time the mission began, Sniper Swanstrom had been awake so
22 long he was unwilling to drive.

23 107. Detective Stella and Undersheriff Lakewold consciously decided to
24 disregard the ERT threat assessment and planning protocols.
25

1 108. Detective Stella and Undersheriff Lakewold briefed the remaining
2 members of the ERT and deputy Flannigan at approximately 6:30 the morning of
3 September 26, 2017.

4 109. The ERT's stated goal was to surround the home and attempt to talk
5 Johnson into coming out of the home and surrendering himself.

6 110. The ERT was to do only a callout, not a breach.

7 111. Sniper Deem and Sniper Swanstrom were assigned cover the area of the
8 residence where the main door and entry point were located.

9 112. An ambulance was placed on standby.

10 113. The remaining members of the team arrived in an armored personnel
11 carrier referred to as the "Bearcat".

12 114. As the Bearcat entered the Johnsons' private property, it turned on the red
13 and blue lights for identification.

14 115. The Bearcat was positioned so that it could view the back of the home.

15 116. Detective Aaron Walker was a trained crisis negotiator.

16 117. Though Detective Aaron Walker was on the team, Detective Stella
17 consciously decided to not use Detective Walker as a crisis negotiator.

18 118. Detective Stella personally communicated with Craig Johnson.

19 119. Detective Stella did not have formal training as a crisis negotiator.

20 120. Detective Stella alternated contact with Craig Johnson through use of the
21 public address (PA) system to make callouts to Craig Johnson and telephone calls to
22 Craig Johnson.
23
24
25

1 121. Detective Stella called Craig Johnson on his cell phone at 8:30:24 am on
2 September 26, 2017. The call lasted 23 seconds.

3 122. Detective Stella called Craig Johnson on his cell phone at 8:31:00 am on
4 September 26, 2017. The call lasted 8 minutes and 43 seconds.

5 123. Detective Stella called Craig Johnson at 8:40:19 am on September 26,
6 2017. The call lasted 37 seconds.

7 124. At 8:41 am, Craig Johnson sent three texts to his wife, Plaintiff Robin
8 Johnson. They read:
9

10 a. "Cops are here guns pointed at me thanks";

11 b. "why did you lie to me";

12 c. "you told me to call now you know I'm calling you.

13 125. Craig Johnson tried to call his wife at 8:41.

14 126. At 8:41, Detective Stella also called Plaintiff Robin Johnson.

15 127. Detective Stella left a message requesting that she call him back and
16 provided no further information.

17 128. Plaintiff Robin Johnson had no reason to believe she needed to be at the
18 ready to answer phone calls from her husband or BSCO officers.

19 129. Plaintiff Robin Johnson was not near her cell phone to receive text
20 messages during the ERT's mission on September 26, 2017.

21 130. Plaintiff Robin Johnson was not near her cell phone to receive phone calls
22 during the ERT's mission on September 26, 2017.

23 131. Detective Stella attempted to call Craig Johnson at 8:42:46 and 8:43:57.

24 132. At 8:44, Johnson again tried to call his wife.
25

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1 133. Detective Stella attempted to call Craig Johnson at 8:44:26, 8:45:27, and
2 8:45:41.

3 134. At 8:47, Johnson again tried to call his wife.

4 135. Detective Stella attempted to call Craig Johnson at 8:48:14 and 8:50:05.

5 136. The 8:50:05 call from Detective Stella to Johnson lasted 23 seconds,
6 ending at 8:50:28.

7 137. "Shots fired, suspect down" was reported to dispatch at 8:50:57.

8 138. Medical arrived on the scene at 8:55:31.

9 139. Deputy Gagnon, who had been stationed at the gate, outside the property,
10 followed medical into the property and the scene of the shooting.

11 140. While medical was rendering aid to Craig Johnson, the team went through
12 every room in Johnson's residence.

13 141. During the search, Detective Stella unnecessarily kicked in an unlocked
14 door to the guest bedroom.

15 142. In their conversations the prior day, Monday, September 25, 2017, Robin
16 Johnson told Detective Stella that Craig Johnson kept the black pistol in the nightstand
17 next to the bed in the master bedroom.

18 143. It is the same black pistol that Craig Johnson was holding the night of the
19 health and welfare check.

20 144. It is the same black pistol that officers allege was seen on the ground near
21 Craig Johnson body after he was shot.

22 145. Deputy Gagnon was wearing a body camera.
23
24
25

1 146. Deputy Gagnon did not use the body camera to take any photographs or
2 video of the scene to document Johnson's body position after he was shot.

3 147. Deputy Gagnon did not use the body camera to take any photographs or
4 video to document the black pistol that Johnson was allegedly holding when he was
5 shot.

6 148. Medical took Johnson away in an ambulance towards the landing zone
7 where life flight was waiting.

8 149. Johnson died en route to the life flight landing zone.

9 150. Plaintiff Robin Johnson attempted to call Detective Stella at 9:45:07;
10 10:01:30; 10:16:49; 10:25:25; 10:27:36; 10:47:02; 10:48:06.

11 151. Detective Stella did not answer her calls.

12 152. All team members except for Detective Stella and Undersheriff Lakewold
13 left the scene and returned to the Marine Building and BSCO headquarters.

14 153. Deputy Gagnon transported Sniper Deem to the Marine Building.

15 154. During the drive, Deputy Gagnon provided counselling and comfort to
16 Sniper Deem.

17 155. Deputy Gagnon assured Sniper Deem that the Idaho State Police would
18 "be there for him"

19 156. Detective Prosser of the Idaho State Police was assigned to lead the
20 investigation.

21 157. Detective Prosser instructed Kootenai County Sherriff's Office personnel
22 to conduct interviews with only the witness officers.

1 158. Interviews with the officers directly involved in the shooting—Sniper Deem
2 and Sniper Swanstrom—would not take place until September 29, 2017, three days
3 after the shooting.

4 159. Detective Stella was first interviewed at the scene at 12:50 pm on
5 September 26, 2017 by Detective Brostmeyer.

6 160. In his September 26, 2017 interview, the only statements that Detective
7 Stella made regarding his personal, direct observation of the shooting were that he
8 “heard two distinct drop the gun, drop the gun and then heard two distinct shots after
9 that.”
10

11 161. Detective Stella did not state that he saw Craig Johnson holding a
12 weapon.

13 162. Detective Stella did not state that he saw Craig Johnson exhibit any
14 hostile behaviors towards deputies.

15 163. Detective Goodwin interviewed Riley Flannigan at 1:31 on September 26,
16 2017 at BSCO headquarters.

17 164. In his September 26 interview, the only statements that Flannigan made
18 regarding his personal, direct observation of the shooting were that “we got – heard
19 over the radio from the guys on the other side of the house, ah, that he was existing the
20 house, coming towards the vehicle. I thought at that point he was coming towards our
21 vehicle, so we positioned ourselves to take him into custody.” Then “...waiting I heard a
22 gunshot and I heard shots fired.”
23

24 165. Officer Flannigan did not state that he saw Craig Johnson holding a
25 weapon.

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1 166. Officer Flannigan did not state that he saw Craig Johnson exhibit any
2 hostile behaviors towards deputies.

3 167. Detective Goodwin interviewed Sergeant Charles Robert Van Burean at
4 1:36 on September 26, 2017 at BSCO headquarters.

5 168. At the time of the September 26, 2017 interview, the only information
6 Deputy Van Buren gave regarding his direct, personal observation of the shooting was
7 he heard the announcement of shots fired.

8 169. Sergeant Van Burean did not state that he saw Craig Johnson holding a
9 weapon.
10

11 170. Sergeant Van Burean did not state that he saw Craig Johnson exhibit any
12 hostile behaviors towards deputies.

13 171. Detective Goodwin interviewed Detective Aaron Walker at 1:42 on
14 September 26, 2017 at BSCO headquarters.

15 172. In his September 26 interview, the only statements Deputy Walker made
16 about his direct, personal observation of the shooting was "I heard over the radio, I – I
17 don't know if it was Sean or Ted say that they saw the suspect come out on the back
18 porch of the number 4 side is what they said on the radio, and that he was coming out,
19 so we all grabbed onto the Bearcat and drove up towards the house. Just prior to us
20 getting there, I heard two gunshots."
21

22 173. Detective Aaron Walker did not state that he saw Craig Johnson holding a
23 weapon.

24 174. Detective Aaron Walker did not state that he saw Craig Johnson exhibit
25 any hostile behaviors towards deputies.

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1 175. Detective Goodwin interviewed Sergeant Timothy Reynolds at 1:52 on
2 September 26, 2017 at BSCO headquarters.

3 176. In his September 26 interview, the only statements Deputy Reynolds
4 made about his direct, personal observation of the shooting were that Johnson “looked
5 at us, started walking away from us towards the woods directly where I guess (Sean)
6 and (Ted) were at and (unintelligible) and they’re telling – saying he’s coming out of the
7 house and that’s when I saw him and he was heading directly back to our – come to find
8 out later where (Sean) and (Ted) were, and um, next thing I know I heard something
9 about a gun, then I hear a gunshot... and I watched the, ah, suspect drop.”
10

11 177. Detective Reynolds stated that he actually saw Craig Johnson “drop.”

12 178. Detective Reynolds did not say anything about Craig Johnson holding a
13 gun.

14 179. Detective Reynolds did not say anything about Craig Johnson exhibiting
15 any hostile behaviors towards deputies.

16 180. Detective Goodwin interviewed Undersheriff Ror Lakewold at 2:01 on
17 September 26, 2017 at BSCO headquarters.

18 181. At the time of his September 26, 2017 interview, the only information
19 Undersheriff Lakewold gave about his direct, personal observation of the shooting was
20 as follows: “Um, the high ground, ah, guys announced that he was coming out the
21 back, and, ah, so, ah, I put – I put the – the vehicle in drive and started driving around.
22 Ah, as I was, ah, making the approach we were still, um, ah, m, we were still quite a
23 ways away, um ,I’m guessing anywhere – somewhere between 50 and a hundred yards
24 away. Ah, I could see his back, um, the suspect’s back as he’s walking down the path,
25

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1 um, and ah – ah, I could hear Sheriff's Office, um, ah, oddly I didn't hear the shots fired,
2 but I – I heard Sheriff's Office, ah, and then I saw him go down..."

3 182. Undersheriff Lakewold stated that he actually saw Craig Johnson "go
4 down".

5 183. Undersheriff Lakewold did not say anything about Craig Johnson holding a
6 gun.

7 184. Undersheriff Lakewold did not say anything about Craig Johnson
8 exhibiting any hostile behaviors towards deputies.

9 185. The press release issued by the Idaho State Police on September 26,
10 2017, stated that the suspect "exhibited hostile behavior to the deputies."

11 186. Two days later, on September 28, 2017, at 5:17 p.m., the day before the
12 interview of the two involved officers, Detective Neth of the Idaho State Police sent a
13 draft press release to Sherriff Wheeler providing a proposed narrative of the incident.

14 187. In the draft press released, Detective Neth proposed the following
15 narrative: "Johnson exited his residence with a handgun and confronted the deputies,
16 forcing them to use deadly force."

17 188. Sheriff Wheeler forwarded the draft press release to Undersheriff
18 Lakewold at 5:23 on September 28, 2017 stating "please take a look at this and verify
19 that this was the chain of event <sic> proceeding <sic> the shooting. I'm not really
20 liking the format of the press release. Give me a call after you read it."

21 189. On Friday, September 29, 2017 at 8:36 a.m., prior to the interviews of the
22 officers involved in the shooting, Undersheriff Lakewold sent an e-mail to Sheriff
23 Wheeler proposing a more detailed narrative of the events.
24
25

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1 190. Undersheriff Lakewold proposed the following narrative: “A short time later
2 Johnson exited the residence attempting <sic> to leave through the woods holding a
3 handgun. Deputies ordered him to drop the gun and to surrender. Johnson refused
4 verbal commands and raised his gun towards deputies, forcing them to use deadly
5 force.”

6 191. After Undersheriff Lakewold circulated his proposed narrative, Detective
7 Prosser interviewed the two snipers directly involved in the shooting.

8 192. Detective Prosser interviewed Sniper Deem, the shooter, at 10:05 on
9 September 29, 2017.

10 193. Sniper Deem told Detective Prosser the following regarding his personal
11 observations immediately before firing two shots at Johnson:
12

13 I hear Ted screaming, you know, “Drop the gun, drop the
14 gun.” He’s screaming and then it’s just like, oh, shit. He’s –
15 he’s, um, made contact with us, you know ‘cause he’s not
16 going toward the Bearcat to give up. He must have come
17 back towards us. And I can’t see anything because this
18 stupid bush is right in front of me. And I hear Ted screaming
19 a couple of times and then I see the suspect coming right at
20 Ted. And he’s got his gun just drawn right on him and I’m
21 like, holy shit, where did this guy just come from? And I just
22 pick my rifle up as fast as I could and I put my scope and I
23 fired two quick rounds.
24
25

1 194. Later, in that same interview, Sniper Deem related the following additional
2 information regarding Johnson's conduct immediately before Sniper Deem shot him:

3 I saw it was a black pistol and he was pointing it in, you
4 know, like you're trying to get that perfect shot but he's
5 aggressing towards Ted.... Pretty quick. You know, he's
6 not running but he's moving pretty quickly. Just dead set on
7 going right at Ted. And its just, like holy shit, he's about to
8 kill my friend right here. So, that's all I can remember.
9

10 195. Sniper Deem's interview concluded at 10:41.

11 196. Detective Prosser interviewed Sniper Swanstrom at 11:08 on September
12 29, 2017.

13 197. At the time of the shooting, Sniper Swanstrom had been awake for
14 approximately 19 hours.

15 198. Being awake for 19 hours creates functional deficits equivalent to blood
16 alcohol content of .05.
17

18 199. In his interview, Sniper Swanstrom related the following regarding Mr.
19 Johnson's conduct immediately before he was shot by Sniper Deem:

20 I saw pretty much the back of his head, because he was
21 looking back towards his house. Towards the team. Um, so
22 of course, knowing that we had an arrest warrant for him, I
23 stood up, uh, where I was, which was roughly at, say, about
24 20 yards away from him. Um, gave commands – I believe I
25 said Sheriff's office, um, and as he walked and turned like

1 that, I could see in his left hand he had a pistol. A black
2 pistol. He wasn't carrying it normally as you would go to
3 shoot somebody. I believe it was backwards with the – with
4 the, uh, pistol grip towards me. As he was, say, walkin'. As
5 I made commands to him, I believe I startled him and he
6 kinda paused real quick. Um, at that time, I noticed the gun.
7 Uh, I verbally yelled, "Gun." Um, he was able to grab it like
8 that and start raising it up towards me. So I told – I
9 instructed him – believe it was twice to drop the gun, drop
10 the gun. Um, at that time, I was startin' to come up. Um, I
11 wasn't fully on target with my AR. It was – I wouldn't call it a
12 low ready. Maybe a medium ready. Um, I was startin' to
13 come up on target. Um, 'cause he wasn't droppin' the gun.
14 He wasn't lowering or anything, and I heard Sergeant Deem
15 take off two shots. Um, at that time, I saw him fall. So I
16 didn't pull the trigger.

17
18 200. Later in that same interview, Sniper Swanstrom described Johnson's
19 conduct immediately before being shot by Sniper Deem as follows:

20 When I – he – when he comes around the s- thicket, I see
21 him looking back. Um, i- in a slow walk. He's not running.
22 He's not doing anything. He's not yelling. He's at a slow
23 walk. Um, his hands are moving normally, like someone
24 walking. And that's when I see the gun in his left hand, in an
25 unusual way of carrying it. Not, like, with the pistol grips in

1 your – in your palm, getting' ready to shoot or anything. I
2 believe it was backwards. Um, and that's when I – I got up,
3 gave announcement to Sheriff's Office. I- it was either
4 'Sheriff's Office. Show me your hands.' Or, because I saw
5 the gun, 'Sheriff's office. Gun.' Um, and at that time, he
6 kinda – he had time to grab it around like this. Come up that
7 way, and that's when he was comin' up. I yelled, 'Drop the
8 gun. Drop the gun.'"

9
10 201. Moments later in that same interview, Sniper Swanstrom related the
11 following version:

12 ...as he has his pistol in his left hand, it is, uh, backwards.
13 And at the time that I see him, um, he actually was – was
14 looking away, and I see him and I – I stand up where I was,
15 and that way fully showing myself as law enforcement. But I
16 – I didn't want to say – I believe I did say, "Sheriff." Um, it
17 caused him to stop in his tracks. Uh, look at me. He moved
18 his right hand from his right side over the front of his body,
19 reaching around to where his left hand was, grabbing the
20 gun in his right hand with the pistol grips in his palm and
21 finger like it would be. I don't know if it was in the trigger or
22 not, but he grabbed the pistol like that. Um, came back
23 around and was raising the gun, pointing it at – at myself.
24
25

1 202. In response to Detective Prosser's question "Did he move towards you?"
2 Sniper Swanstrom explained:

3 He did not move once I startled him. Um, the only movem-
4 he didn't move his feet or step towards me. Um, the only
5 movement that I saw was his right hand goin' and grabbing
6 the l- the gun out of this left hand. His arm coming back
7 around, lifting up the gun, and pointing at me.
8

9 203. Detective Prosser did not ask any further questions regarding the material
10 differences between Sniper Swanstrom's account that Craig Johnson was standing still
11 and Sniper Deem's account that Craig Johnson was rapidly aggressing towards
12 Swanstrom.

13 204. Sniper Swanstrom's interview concluded at 11:52 a.m.

14 205. At 12:56 p.m., Sheriff Wheeler copied Undersheriff Lakewold's re-draft of
15 the press release in an e-mail to Detective Neth.
16

17 206. Detective Prosser rejected the proposed narrative of Sheriff Wheeler and
18 Undersheriff Lakewold's and again proposed the narrative that Detective Neth wrote the
19 night before the Deem and Swanstrom interviews.

20 207. Sheriff Wheeler recommended adding the word "loaded" to the description
21 of the handgun Craig Johnson was allegedly holding.

22 208. In the final press release, the portion regarding Craig Johnson's conduct
23 immediately prior to being shot was version drafted by Detective Neth on September 28,
24 2017, the evening before Deem and Swanstrom were interviewed, but with the word
25 "loaded" added to the description of the handgun Johnson was allegedly carrying.

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1 209. When Sniper Deem shot Craig Johnson, Sniper Deem was positioned
2 approximately 10 yards to the left of Sniper Swanstrom.

3 210. Craig Johnson was positioned approximately 20 yards away from Sniper
4 Swanstrom.

5 211. At the time Detective Prosser and Detective Snell arrived to investigate,
6 orange traffic cones had been set out to highlight the location of the suspect and officers
7 at the time of the shooting.

8 212. In a photograph of the cones marking the relative positions of the snipers
9 and Craig Johnson at the time of the shooting taken by Detective Snell, their relative
10 positions were labeled as follows:
11



17 213. The autopsy report identifies one entry wound through Craig Johnson's
18 right shoulder blade with the bullet exiting through Johnson's left shoulder blade.

19 214. The autopsy report identifies one entry wound through Craig Johnson's
20 right side abdomen, exiting through Johnson's left side abdomen, with entry and exit
21 wounds through Craig Johnson's left elbow.

22 215. Mission planners, Detective Stella and Undersheriff Lakewold, consciously
23 decided to not complete an ERT Threat Assessment form.
24
25

**COMPLAINT FOR DAMAGES JURY
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218. The Snipers' role in the mission did not involve attempting to prevent Craig Johnson from fleeing.

219. The Snipers' role in the mission did not involve attempting to disarm Craig Johnson.

220. The Snipers' role in the mission did not involve engaging with Craig Johnson.

221. In executing the mission, all ERT team members disregarded the BCSO policy that required the use of body cameras.

222. There were no identifiable fingerprints on the weapon that Craig Johnson was allegedly holding by the barrel.

223. There was no identifiable DNA on the weapon that Craig Johnson was allegedly holding by the barrel.

42 U.S.C. § 1983

224. Plaintiff hereby adopts and re-alleges all preceding paragraphs of the Complaint as if fully set forth herein.

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1 225. Defendant Detective Stella and defendant Undersheriff Lakewold, acting
2 under color of state law, used excessive force when they decided to use the ERT to
3 serve the arrest warrant on Craig Johnson; use of excessive force was in violation of the
4 Fourth Amendment of the Constitution of the United States, made applicable to the
5 states through the Fourteenth Amendment of the Constitution of the United States.

6 226. The decision to use the ERT to serve the arrest warrant gives rise to both
7 individual and supervisor liability.
8

9 227. Supervisor liability exists for setting into motion a series of acts by others
10 which they knew or should have known would cause others to inflict constitutional injury;
11 for their actions or inactions in training, supervising, and controlling the ERT Team
12 members, and/or for conduct that showed a reckless or callous indifference to the
13 constitutional rights of Craig Johnson to be free from unreasonable seizures.

14 228. Based on a totality of the circumstances, the decision to utilize the ERT to
15 serve the arrest warrant on Johnson, was objectively unreasonable and constitutes
16 excessive force.

17 229. The circumstances that made use of the ERT for service of the arrest
18 warrant on Craig Johnson objectively unreasonable include, but are not necessarily
19 limited to the following:
20

- 21 a. The conduct of Craig Johnson that lead to the issuance of the arrest
22 warrant was an isolated incident in which Craig Johnson was surprised at
23 his private residence at midnight by an unexpected visitor; demonstrated
24 the ability to protect himself and his property by displaying a firearm he
25 lawfully possessed, continued to display the firearm in a demonstration of

1 the ability to protect himself and his property after the unexpected visitor
2 drew a firearm and pointed it "center mass" at him; and retreated into his
3 private residence, without incident, less than one minute after the
4 unexpected visitor arrived;

5 b. At the time the decision was made to deploy the ERT, Craig Johnson did
6 not pose an immediate threat to the safety of law enforcement and
7 Defendant Detective Stella made a conscious decision to recklessly ignore
8 evidence to the contrary;

9 c. At the time the decision was made to deploy the ERT, Craig Johnson did
10 not pose an immediate threat to the safety of the general public and
11 Defendant Detective Stella made a conscious decision to recklessly ignore
12 evidence to the contrary;

13 d. Defendant Detective Stella made the conscious decision to not advise
14 Craig Johnson or his wife, Plaintiff Robin Johnson, that the arrest warrant
15 had issued;

16 e. Craig Johnson was unaware that the arrest warrant had issued;

17 f. Craig Johnson was not actively resisting arrest or attempting to evade
18 arrest.

19 g. Craig Johnson cooperated with law enforcement prior to deployment of
20 the ERT by making a phone call to BCSO in an effort to discuss the
21 matter;

22 h. Robin Johnson had cooperated with law enforcement by timely returning
23 phone calls and providing information requested by BSCO;
24
25

- i. The arrest warrant issued less than 18 hours prior to deploying the ERT.
- j. There was no urgency in serving the arrest warrant on Craig Johnson.
- k. Detective Stella and Undersheriff Lakewold had ample time to further investigate Craig Johnson; ample time to make an informed, reasoned, and reasonable decision regarding the type and amount of force necessary to serve the arrest warrant on Craig Johnson and consciously decided to move forward with an understaffed team in an unplanned mission against a suspect who posed no immediate threat to law enforcement or the general public;
- l. Contact made by Detective Stella to Craig Johnson prior to the ERT mission was made under the false pretense of following up on the welfare check;
- m. Contact made by Detective Stella and Deputy Gagnon to Robin Johnson was made under the false pretense of following up on the welfare check;
- n. Contact made by Deputy Gagnon to Craig Johnson's employer was made under the false pretense of following up on the welfare check;
- o. The use of the ERT, which included six armed officers in an armored tactical vehicle and two snipers hidden off the front door of the Johnson residence, is an overwhelming and excessive show of force for purposes of apprehending a suspect who posed no immediate threat to officers or the general public;
- p. No attempt was made to get Craig Johnson to voluntarily surrender;

- 1 q. No attempt was made to work with Robin Johnson to get Craig Johnson to
2 voluntarily surrender;
- 3 r. No attempt was made to work with Craig Johnson's employer to get Craig
4 Johnson to voluntarily surrender;
- 5 s. BSCO did not have a search warrant for the Johnson property;
6 accordingly, there was no need for BSCO officers to be physically present
7 at the Johnson residence in order to serve the arrest warrant;
- 8 t. There were no lives at risk;
- 9 u. To the extent any lives were at risk, full culpability for such risk rests with
10 the officers for recklessly creating an increased risk of harm and
11 escalation of the encounter to one where excessive/deadly force could
12 become necessary by electing to serve the arrest warrant at the Johnson
13 home when they knew that Craig Johnson was in lawful possession of
14 firearms;
- 15 v. It was practical for officers to advise Johnson that the arrest warrant had
16 issued and to attempt to negotiate surrender with him without an
17 unnecessary, excessive, unreasonable display of force;
- 18 w. The officers were not responding to a domestic violence situation and
19 none was ever reported or suggested;
- 20 x. The officers believed that Craig Johnson's uncharacteristic response to
21 the health and welfare check was the result of an emotional disturbance or
22 other "mental event";
23
24
25

- 1 y. Based on Robin Johnson's report to Detective Stella and Deputy Gagnon
2 of the Memorial Day incident, reasonable officers would have further
3 investigated the circumstances of that encounter in which they would have
4 learned that Johnson was a non-violent, law abiding citizen, who was
5 generally supportive of police officers; however, both officers
6 unreasonably and recklessly chose to disregard the severity of the
7 reported officer conduct and to baselessly assume that Craig Johnson
8 acted unreasonably and with animus to law enforcement in that situation;
9
10 z. There was no probable cause for an officer to believe that Craig Johnson's
11 demonstration of the ability to defend himself and his home when
12 surprised by an unexpected visitor at midnight on a Sunday night was a
13 crime involving the threatened infliction of serious physical harm;
14
15 aa. Other factors known to BSCO that made use of the ERT objectively
16 unreasonable include (i) confirmation that Craig Johnson had no prior
17 involvement with law enforcement; (ii) confirmation that Craig Johnson
18 had no criminal history; (iii) confirmation that Craig Johnson had no history
19 of violent or aggressive behavior to the general public; (iv) confirmation
20 that Craig Johnson, a member of the local search and rescue team, was
21 regarded as a calm, level-headed citizen.

22 230. The requirement to execute an arrest warrant in a manner and under
23 conditions that are objectively reasonable given the totality of the circumstances is well
24 defined by law.
25

231. Detective Stella and Undersheriff Lakewold knew, or reasonably should have known, that the deployment of the ERT under the totality of the circumstances was reckless and/or unreasonable exercise of force that was so closely related to the deprivation of Johnson's rights to be free from unreasonable seizure to be the moving force that cause the ultimate injury: Craig Johnson's death.

232. As a result of the violations of the constitutional standards set forth herein, Craig Johnson was wrongfully killed, and his wife, Plaintiff Robin Johnson, suffered the loss of the care, comfort, society, and support of her husband, as well as emotional and mental trauma resulting from the death of her husband. The extent of damages will be fully proven at trial.

233. Plaintiff was required to hire attorneys to represent her in this matter and is entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

COUNT II

42 U.S.C. § 1983

Excessive Force: Reckless Creation of Danger

Defendants Madden, Stella, Lakewold, Gagnon, Swanstrom & Deem

234. Plaintiff hereby adopts and re-alleges all preceding paragraphs of the Complaint as if fully set forth herein.

235. The conduct of defendant Detective Stella and defendant Undersheriff Lakewold, defendant Deputy Gagnon, defendant Deputy Madden, defendant Sniper Swanstrom, and defendant Sniper Deem, acting under color of state law, needlessly and recklessly created unreasonably dangerous circumstances that resulted in the use

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1 of excessive, lethal force against Craig Johnson in violation of the Fourth Amendment of
2 the Constitution of the United States, made applicable to the states through the
3 Fourteenth Amendment of the Constitution of the United States.

4 236. Craig Johnson was entitled to be safe and secure from undue and
5 unreasonable use of force in the execution of the arrest warrant against him.

6 237. Officers have a duty to not engage in reckless conduct that gives rise to
7 the need to use excessive or deadly force against a suspect.

8 238. In breach of that duty and in violation of Craig Johnson's rights,
9 defendants engaged in a course of reckless and malicious conduct that needlessly and
10 recklessly led to the creation of an unreasonably dangerous set of circumstances
11 resulting in the use of excessive, deadly force against Craig Johnson.

12 239. The reckless and malicious actions of defendants, each of them acting
13 alone and in concert with each other, that contributed to the unnecessary and
14 unreasonably dangerous circumstances surrounding the use of excessive and lethal
15 force against Craig Johnson include, but are not necessarily limited to, the following:

16 a. All named defendants' malicious, reckless, conscious decision to
17 disregard evidence that Craig Johnson was a non-threatening, law abiding
18 citizen as evidence by (i) lack of any prior criminal history; (ii) lack of any
19 prior involvement with law enforcement; (iii) lack of any evidence that
20 Johnson ever behaved in a threatening manner to any member of the
21 general public;

22 b. All named defendants' malicious, reckless, conscious decision to
23 disregard the totality of the circumstances surrounding Craig Johnson's
24
25

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1 reasonable, non-felonious conduct on the night of the health and welfare
2 check when he was startled awake at midnight at his private residence,
3 lawfully armed himself with a firearm to confront the unexpected visitor,
4 lawfully demonstrated the ability to defend himself and his property
5 against the unexpected visitor, lawfully demanded the unexpected visitor
6 leave his private property, lawfully continued to demonstrate the ability to
7 defend himself after the unexpected visitor aimed a gun “center mass” at
8 him; and calmly retreated into his home after fully assessing and
9 processing the identity of the unexpected visitor and assuring his own
10 safety;
11

12 c. Detective Stella’s and Undersheriff Lakewold’s malicious, reckless,
13 conscious decision to use the ERT to serve the arrest warrant on Craig
14 Johnson in less than 18 hours after it had issued, despite the following:

- 15 i. Craig Johnson posed no immediate threat to law enforcement;
- 16 ii. Craig Johnson posed no immediate threat to the general public;
- 17 iii. Craig Johnson was cooperating with authorities by returning BSCO
18 phone calls;
- 19 iv. Craig Johnson’s wife, Plaintiff Robin Johnson, was cooperating with
20 authorities by returning BSCO phone calls and providing relevant
21 information;
- 22 v. Craig Johnson’s employer, was cooperating with authorities by
23 providing relevant information;
- 24 vi. Five of the usual members of the ERT were unavailable;
- 25

- 1 vii. The lead sniper, Deputy Swanstrom, had been on shift for 17 hours
2 at the time the ERT mission commenced.
- 3 d. Detective Stella's reckless, conscious decision to not advise Craig
4 Johnson that an arrest warrant had issued;
- 5 e. The reckless, conscious decision to not advise Craig Johnson's wife,
6 Plaintiff Robin Johnson, that an arrest warrant had issued;
- 7 f. The reckless, conscious decision to affirmatively misrepresent police
8 intentions to Craig Johnson's wife, Plaintiff Robin Johnson;
- 9 g. The reckless, conscious decision to affirmatively misrepresent to Craig
10 Johnson that the purpose of police phone calls was to "follow-up on the
11 health and welfare check";
- 12 h. The reckless, conscious decision to affirmatively misrepresent to Craig
13 Johnson's employer that inquiries regarding Craig Johnson's
14 whereabouts, habits, and schedules were in furtherance of a health and
15 welfare check;
- 16 i. The reckless failure of BSCO to answer Craig Johnson's call the night
17 before the ERT was deployed to the Johnson residence;
- 18 j. The reckless failure of BSCO to return the call made by Craig Johnson the
19 night before the ERT was deployed to the Johnson residence;
- 20 k. The malicious, reckless, unsupported assumption that Craig Johnson
21 possessed an animosity towards law enforcement;
- 22 l. The malicious, reckless, unsupported assumption that Craig Johnson
23 posed a threat to law enforcement;
- 24
- 25

1 m. The malicious, reckless, unsupported assumption that Craig Johnson
2 posed a threat to the general public;

3 n. Sniper Swanstrom's reckless disregard of his role in the mission in
4 deciding to identify himself in response to Craig Johnson walking calmly
5 away from his home;

6 o. Sniper Deem's reckless disregard of the harm to come to Craig Johnson
7 when firing two shots at Craig Johnson in response to Sniper Swanstrom's
8 recklessly engaging with Craig Johnson;

9
10 240. The duty to refrain from reckless or malicious conduct that gives rise to the
11 need to use excessive or deadly force is well defined by law.

12 241. All named defendants knew, or reasonably should have known, that their
13 malicious, reckless conduct created a totality of circumstances that gave rise to their
14 use of excessive and deadly force in violation of Craig Johnson's right to be free from
15 unreasonable seizure of his person, in violation of the Fourth Amendment of the
16 Constitution of the United States, made applicable to the states through the Fourteenth
17 Amendment of the United States.

18 242. The malicious and reckless conduct of the individual defendants listed
19 above operated at the same time to independently and concurrently cause and
20 contribute to the unreasonable use of excessive and deadly force against Craig
21 Johnson.

22
23 243. As a result of the violations of the constitutional standards set forth herein,
24 Craig Johnson was wrongfully killed, and his wife, Plaintiff Robin Johnson, suffered the
25 loss of the care, comfort, society, and support of her husband, as well as emotional and

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1 mental trauma resulting from the death of her husband. The extent of damages will be
2 fully proven at trial.

3 244. Plaintiff was required to hire attorneys to represent her in this matter and
4 is entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. §
5 1988.

6 **COUNT II**

7 **42 U.S.C. § 1983**

8 **Excessive/Deadly Force:**

9 **Defendants Swanstrom & Deem**

10
11 245. Plaintiff hereby adopts and re-alleges all preceding paragraphs of the
12 Complaint as if fully set forth herein.

13
14 246. The conduct of defendant Sniper Swanstrom and defendant Sniper Deem,
15 acting under color of state law, in using deadly force against Craig Johnson constituted
16 excessive force in violation of the Fourth Amendment of the Constitution of the United
17 States, made applicable to the states through the Fourteenth Amendment of the
18 Constitution of the United States.

19 247. Craig Johnson was entitled to be safe and secure from undue and
20 unreasonable use of force in the execution of the arrest warrant against him.

21 248. The rules of engagement did not call for Sniper Swanstrom to attempt to
22 stop Johnson from fleeing.

23 249. The rules of engagement did not call for Sniper Swanstrom to attempt to
24 disarm Johnson.
25

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1 250. The rules of engagement did not call for Sniper Swanstrom to engage with
2 Johnson in any manner.

3 251. Sniper Swanstrom recklessly disregarded the rules of engagement by
4 engaging with Craig Johnson when Johnson was otherwise walking calmly and looking
5 backwards towards his home and/or the ERT vehicle.

6 252. At the time Sniper Swanstrom recklessly disregarded the rules of
7 engagement, Craig Johnson was not posing an immediate threat to law enforcement
8 officials.

9 253. Immediately after Sniper Swanstrom recklessly disregarded the rules of
10 engagement, Sniper Deem fired two shots from his AR10 at Craig Johnson.

11 254. Both shots from Sniper Deems AR10 struck Craig Johnson through the
12 side.

13 255. One shot entered Craig Johnson's right side abdomen and exited his left
14 side abdomen, then piercing through Craig Johnson's left elbow.

15 256. The other shot entered Craig Johnson's right side shoulder blade and
16 existed his left side shoulder blade.

17 257. There is no credible evidence that Craig Johnson raised a gun in the
18 direction of Sniper Swanstrom.

19 258. The angle of the entry/exit wounds shows Craig Johnson was not
20 positioned so as to be aggressing towards Sniper Swanstrom.

21 259. Craig Johnson was not posing an immediate threat to the safety of officers
22 at the time Sniper Deem shot him through his side and across his back.

23
24
25
**COMPLAINT FOR DAMAGES JURY
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1 unreasonable seizure utilizing excessive/deadly force in violation of the Fourth
2 Amendment of the United States Constitution, made applicable to the states through the
3 Fourteenth Amendment of the United States Constitution.

4 267. The training policies of defendant Bonner County and BCSO were not
5 adequate to prevent violations of law by its police officers or to train its police officers to
6 handle the usual and recurring situations with which they must deal including, but not
7 necessarily limited to:

- 8 a. Conducting health and welfare checks at midnight in an area where many
9 citizens legally possess firearms;
- 10 b. Conducting investigations relating to persons experiencing suspected
11 mental or emotional events;
- 12 c. Engaging with persons experiencing suspected mental or emotional
13 events;
- 14 d. Attempting to safely apprehend persons experiencing suspected mental or
15 emotional events;
- 16 e. Protocols, procedures, and requirements for deploying extraordinary uses
17 of force such as the ERT;
- 18 f. Use of severely fatigued officers in highly sensitive roles where snap
19 judgment, life and death decisions may be required;
- 20 g. Use of officers suffering from mental conditions such as PTSD in field
21 operations;
- 22 h. Use of body cameras.
- 23
- 24
- 25

1 268. Defendant Bonner County and Bonner County Sheriff's Office were
2 deliberately indifferent to the substantial risk that its policies were inadequate to prevent
3 violations of law by its employees and for the known or obvious consequences of its
4 failure to train its police officers to handle the usual and recurring situations with which
5 they must deal.

6 269. The failure of defendants Bonner County and BCSO to prevent violations
7 of law by its police officers and to provide adequate training to its police officers caused
8 the deprivation of Craig Johnson's rights by Detective Stella, Undersheriff Lakewold,
9 Deputy Gagnon, Deputy Madden, Sniper Deem and Sniper Swanstrom; that is, Bonner
10 County and BCSO's failures to prevent violations of law by its officers and failures to
11 train its officers is so closely related to deprivation of Craig Johnson's rights as to be the
12 moving force that the unreasonable seizure through excessive/deadly force, that caused
13 the death of Craig Johnson.
14

15 270. As a result of the violations of the constitutional standards set forth herein,
16 Craig Johnson was wrongfully killed, and his wife, Plaintiff Robin Johnson, suffered the
17 loss of the care, comfort, society, and support of her husband, as well as emotional and
18 mental trauma resulting from the death of her husband. The extent of damages will be
19 fully proven at trial.
20

21 271. Plaintiff was required to hire attorneys to represent her in this matter and
22 is entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. §
23 1988.
24
25

**COMPLAINT FOR DAMAGES JURY
TRIAL REQUESTED - 43**

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SUPPLEMENTAL STATE CLAIMS

Wrongful Death/Malice, Recklessness, and Gross Negligence and Negligence

Against Bonner County, Bonner County Sheriff's Office, and all individual

Defendants

272. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

273. Defendants Bonner County and BCSO are liable for damages arising out of the malicious, reckless, and grossly negligent acts or omissions of their employees acting in the course and scope of their employment.

274. Defendants Deem, Swanstrom, Stella, Lakewold, Madden and Gagnon were at all times hereto acting in the course and scope of their employment.

275. Defendants Deem, Swanstrom, Stella, Lakewold, Madden and Gagnon failed to exercise ordinary care in investigating Johnson, developing the mission plan to serve his arrest warrant, and take him into custody, which are all part of the daily operational functions of officers of the Bonner County Sheriff's Office. The actions of such officers in their respective roles were negligent, grossly negligent, reckless, and malicious.

276. The actions of Defendants Deem, Swanstrom, Stella, Lakewold, Madden, and Gagnon were reckless in that they intentional and knowingly created a situation which put Craig Johnson into a position of unreasonably high probability that Johnson would be killed.

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1 277. The actions of defendants Deem, Swanstrom, Stella, Lakewold, Madden
2 and Gagnon caused Craig Johnson's wrongful death.

3 278. Craig Johnson was wrongfully killed, and his wife, Plaintiff Robin Johnson,
4 suffered the loss of the care, comfort, society, and support of her husband, as well as
5 emotional and mental trauma resulting from the death of her husband. The extent of
6 damages will be fully proven at trial.

7 279. Defendants Bonner County and the BCS, Sniper Deem, Sniper
8 Swanstrom, Detective Stella, Undersheriff Lakewold, Deputy Gagnon, and Deputy
9 Madden are liable for the damages they caused, in an amount to be determined at trial.
10

11 **Negligent and Intentional Infliction of Emotional Distress**

12 **Against Detective Stella, Detective Gagnon and Detective Madden**

13
14 280. Plaintiff incorporates by reference all preceding paragraphs as if fully set
15 forth herein.

16 281. Deputy Madden, Detective Stella and Deputy Gagnon engaged in
17 negligent, intentional and reckless conduct by, among other things, (i) affirmatively
18 misrepresenting to plaintiff Robin Johnson that the purposes of their conversations with
19 and inquiries of her were ongoing actions to secure information about the well-being of
20 her husband, Craig Johnson, when in reality, they were gathering information for
21 purposes of justifying malicious and reckless use of the ERT to serve an arrest warrant
22 on Craig Johnson; (ii) maliciously, recklessly, and deceptively advising plaintiff Robin
23 Johnson to "stay away" and give Craig Johnson time to calm down and cool off when, in
24 reality, they wanted plaintiff to stay away from Craig Johnson so as to not hinder or
25

**COMPLAINT FOR DAMAGES JURY
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1 impede their efforts to use the ERT to serve an arrest warrant on Johnson; (iii) using
2 information cooperatively provided by Robin Johnson to maliciously and recklessly
3 fabricate a false picture of Johnson as a violent individual with an animus towards law
4 enforcement in order to justify the unreasonable and unnecessary use of excessive
5 force to serve the arrest warrant on Craig Johnson; and (iv) embellishing and fabricating
6 the information provided to them by Robin Johnson in subsequent investigations
7 conducted by the ISP in order to avoid discipline and scrutiny for their malicious and
8 reckless use of force.
9

10 282. Such conduct is extreme and outrageous;

11 283. Deputy Madden, Detective Stella, and Deputy Gagnon's affirmative
12 misrepresentations to Plaintiff Robin Johnson caused her to falsely believe the incident
13 arising from the health and welfare check on her husband was resolving cooperative
14 and without the need for a show of force, that law enforcement officers were allowing
15 Craig Johnson an opportunity to cool off, calm down, and work with them to resolve
16 misunderstandings arising from the health and welfare check, and to unknowingly,
17 falsely relate this information to Craig Johnson the night before he was killed.

18 284. As a result of the false information provided by officers to plaintiff Robin
19 Johnson, and then related from plaintiff Robin Johnson to decedent Craig Johnson, one
20 of the last messages sent to plaintiff Robin Johnson by her husband before he was
21 killed was: "why did you lie to me."
22

23 285. Plaintiff Robin Johnson's severe emotional distress resulting from the
24 death of her husband was exacerbated by the knowledge that Deputy Madden,
25

1 Detective Stella and Deputy Gagnon provided her false information which caused her
2 husband's last thoughts about her to be thoughts of betrayal.

3 286. Thereafter, Detective Stella and Deputy Gagnon misrepresented,
4 fabricated, and embellished the information Robin Johnson provided to them out of care
5 and concern for her husband, so that they might individually avoid scrutiny for their
6 malicious, reckless, and negligent involvement in the acts that resulted in the wrongful
7 death of Craig Johnson.

8 287. These additional acts were severe and outrageous and, again, further
9 exacerbated the severe emotional distress suffered by Plaintiff Robin Johnson.

10 288. The emotional distress suffered by Robin Johnson was and is severe,
11 resulting in, among other things, depression for which she sought counselling, loss of
12 sleep, despondency and difficulty engaging in activities of daily living such as showering
13 and eating, and lost time at work. The full extent of Robin Johnson's emotional distress
14 damages will be proven at trial.

15
16 **PRAYER FOR RELIEF**

17 289. On all claims for relief, Plaintiff prays for judgment that the constitutional
18 rights of decedent Craig A. Johnson were violated through the use of excessive/deadly
19 force;

20 290. Against defendants for the state law causes of actions asserted herein;

21 291. For all damages available under state and federal law on all claims in an
22 amount to be proven at trial;

23 292. For reasonable attorney fees and costs incurred in bringing this action
24 against Defendants.
25

**COMPLAINT FOR DAMAGES JURY
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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all questions of fact or combined questions of law and fact raised by this Complaint.

Dated this 25th day of September 2019.

DATED this 25th day of September 2019

FORD & DALTON P.S.
Attorney for Plaintiff

RAINEY LAW OFFICE
Attorney for Plaintiff

BY: /s/Drew D. Dalton
Drew Dalton ISB# 10078

BY: /s/Rebecca A. Rainey
Rebecca A. Rainey, ISB No. 7525

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 2019 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the below noted CM/ECF participants:

1. Heather Yakely Heather.Yakely@kutakrock.com

I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: None.

/s/Drew D. Dalton
DREW D. DALTON

**COMPLAINT FOR DAMAGES JURY
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